

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

LE'DON GAITHER,	)	CASE NO. 1:06 CV 1910
	)	
Petitioner,	)	JUDGE DAVID A. KATZ
	)	
v.	)	
	)	<u>OPINION AND ORDER</u>
DAVID BOBBY,	)	
	)	
Respondent.	)	

On August 10, 2006, petitioner pro se Le'Don Gaither filed the above-captioned habeas corpus action under 28 U.S.C. § 2254. Gaither is incarcerated in an Ohio penal institution, having been convicted of aggravated robbery with a firearm specification in 2004. The petition asserts that his conviction is against the manifest weight of the evidence, and that the trial court abused its discretion in sentencing him to more time than the "principal offender" received. See also, State v. Gaither, No. 85023, 2005 WL 1245637 (Cuy. Cty. App. May 26, 2005). For the reasons stated below, the petition is denied and this action is dismissed.

A federal district court may entertain a petition for a writ of habeas corpus by a person in state custody only on the ground that the custody violates the Constitution or laws of the

United States. Furthermore, the petitioner must have exhausted all available state remedies. 28 U.S.C. § 2254.

The issue of whether or not Gaither's convictions were against the manifest weight of the evidence is an issue of state law. Cf. Tibbs v. Florida, 457 U.S. 31 (1982) (state appellate court reversal on weight of the evidence does not preclude retrial based on the prohibition against double jeopardy). Similarly, no constitutionally based claim is implicated by his assertion that his sentence was an abuse of discretion. There is thus no cognizable habeas claim set forth, as it is simply not the province of this court to reexamine state-court determinations on state-law questions. Estelle v. McGuire, 502 U.S. 62, 67-68 (1991).

Accordingly, the petition is denied and this action is dismissed pursuant to Rule 4 of the Rules Governing Section 2254 Cases. Further, the court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

/s/ David A. Katz

---

DAVID A. KATZ  
UNITED STATES DISTRICT JUDGE